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**LIBERTY MUTUAL INSURANCE COMPANY**

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

SCOTTSDALE INSURANCE  
COMPANY,

CASE NO.: 2:12-cv-01328-GMN-CWH

**STIPULATION AND  
PROTECTIVE ORDER**

Plaintiff/Counterclaim-Defendant,

vs.

LIBERTY MUTUAL INSURANCE  
COMPANY

Defendant/Counterclaim-Plaintiff.

Subject to the approval of this Court, the parties, by and through their attorneys of record, hereby stipulate to the following Protective Order:

To expedite the flow of discovery, facilitate the prompt resolution of disputes over confidentiality, adequately protect material protected by the attorney-client privilege or otherwise claimed to be confidential, and ensure that protection is afforded only to material so designated, it

1 is, pursuant to the Court's authority under Federal Rule of Civil Procedure 26(c), hereby  
2 **ORDERED** that this Protective Order shall govern the disclosure, handling and disposition of  
3 documents and information in this litigation as follows:

## **1. Application.**

**1.1 This Protective Order shall govern:**

6                   a. any document, information or other material produced in discovery in this case  
7 that contains communications with Petro's counsel (Stephen Kent, Esq. and/or Pamela Adams,  
8 Esq.) to which the parties to this litigation, or either of them were made privy in their capacity as  
9 insurers of Petro; and

## 2. Definitions.

20                   2.1    Confidential Information. “Confidential Information” shall mean and  
21 include, without limitation, any privileged communications, as well as any non-public information  
22 that concerns or relates to the following areas: litigation strategy, tactics, evaluations, status  
23 reports, or analysis of any aspect of the *Gresham* lawsuit (U.S. District Court for the District of  
24 Nevada Case No. 3:09-cv-00034-RCJ-VPC) and related Ninth Circuit Appeal excluding those  
25 documents attached to this matter’s Amended Complaint.

26                   2.2 Documents. As used herein, the term "documents" includes all writings,  
27 records, files, drawings, graphs, charts, photographs, e-mails, video tapes, audio tapes, compact

1 discs, electronic messages, other data compilations from which information can be obtained and  
2 other tangible things subject to production under the Federal Rules of Civil Procedure.

3. **Initial Designation.**

3.1 Good Faith Claims. Claims of confidentiality will be made only with respect to documents, other tangible things and information that the asserting party has a good faith belief are within the definition set forth in subparagraph 2.1 of this Protective Order. Objections to such claims made pursuant to paragraph 5, below, shall also be made only in good faith.

3.2 Produced Documents. A party producing documents that it believes constitute or contain Confidential Information shall produce copies bearing a label that contains or includes language substantially identical to the following:

**CONFIDENTIAL**

This label shall be affixed in a manner that does not obliterate or obscure the contents of the copies. If any person or party makes copies of documents designated as containing Confidential Information, the copying person or party shall mark each such copy as containing Confidential Information in the same form as the Confidentiality notice on the original document.

A party producing documents that are stored on electronic, magnetic, optical or other non-paper media, such as compact discs, DVD's, video tapes and audio tapes (collectively, "data storage devices") shall designate the data storage device as containing Confidential Information, by affixing a label or stamp to the data storage device in the manner described above at the time copies of such data storage devices are produced. If the receiving party or other persons or entities to whom disclosure is authorized pursuant to subparagraph 7.1 make a copy of any data storage device designated by the producing party as containing Confidential Information, the receiving party or other authorized person shall mark each such copy as containing Confidential Information in the same form as the confidentiality notice on the original data storage device produced. If the receiving party or other authorized person prints out or otherwise makes copies of the documents or information stored on such data storage device, the receiving party or other authorized person shall mark each page so copied with the label or stamp specified in subparagraph 3.2.

1                   3.3     Interrogatory Answers. If a party answering an interrogatory or other  
2 discovery demand intends its response to include any Privileged or Confidential Information , it  
3 shall set forth that answer in a separate document that is produced and designated in the same  
4 manner as a produced document under subparagraph 3.2. Such answers should make reference to  
5 the separately-produced document containing the answer, but such document should not be  
6 attached to the response.

7                   3.4     Inspection of Documents. In the event a party elects to produce files and  
8 records for inspection and the requesting party elects to inspect them, no designation of  
9 Confidential Information needs to be made in advance of the inspection. For purposes of such  
10 inspection, all material produced shall be considered as Confidential Information. If the inspecting  
11 party selects specified documents to be copied, the producing party shall designate Confidential  
12 Information in accordance with subparagraph 3.2 at the time the copies are produced.

13                  3.5     Deposition Transcripts. Within twenty-one (21) days after the receipt of a  
14 deposition transcript, a party may inform the other parties to the action of the portions of the  
15 transcript that it wishes to designate as Confidential Information. Until such time has elapsed,  
16 deposition transcripts in their entirety are to be considered as Confidential Information. All parties  
17 in possession of a copy of a designated deposition transcript shall mark it appropriately. The court  
18 reporter shall comply with and be bound by this Order. In the event that the party furnishing  
19 deposition testimony designates portions or all of that testimony as Confidential Information, the  
20 court reporter shall separately transcribe and submit under seal, to counsel for the parties,  
21 transcriptions of the testimony so designated. Confidential transcripts of deposition testimony  
22 shall be treated the same and afforded the same protections as other documents and materials  
23 designated as Confidential Information under this Order.

24                  3.6     Multi-page Documents. A party may designate all pages of an integrated,  
25 multi-page document, including a deposition transcript and interrogatory answers, as Confidential  
26 Information by placing the label specified in subparagraph 3.2 on the first page of the document or  
27 on each page of the document. If a party wishes to designate only certain portions of an integrated,  
28 multi-page document as Confidential Information, it should designate such portions immediately

1 below the label on the first page of the document and place the label specified in subparagraph 3.2  
2 on each page of the document containing Confidential Information.

3       4. **Designations by Another Party.**

4           4.1     Notification of Designation. If a party other than the producing party  
5 believes that a producing party has produced a document that contains or constitutes Confidential  
6 Information of the non-producing party, the non-producing party may designate the document as  
7 Confidential Information by so notifying all parties in writing within fourteen (14) days of service  
8 of the document.

9           4.2     Return of Documents; Non-disclosure. Whenever a party other than the  
10 producing party designates a document produced by a producing party as Confidential Information  
11 in accordance with subparagraph 4.1, each party receiving the document shall either add the  
12 Confidential Information designation in accordance with subparagraph 3.2 or substitute a copy of  
13 the document bearing such designation for each copy of the document produced by the producing  
14 party. Each party shall notify the producing party of its intent to destroy all undesignated copies of  
15 the document and, at the election of the producing party, destroy the same or return those copies to  
16 the producing party, at the direction of the producing party. No party shall disclose a produced  
17 document to any person, other than the persons authorized to receive Confidential Information  
18 under subparagraph 7.1, until after the expiration of the fourteen (14) day designation period  
19 specified in subparagraph 4.1. If during the fourteen (14) day designation period a party discloses  
20 a produced document to a person authorized to receive Confidential Information under  
21 subparagraph 7.1, and that document is subsequently designated as Confidential Information in  
22 accordance with subparagraph 4.1, the disclosing party shall cause all copies of the document to  
23 be destroyed or returned to the producing party, at the direction of the producing party. The party  
24 may thereafter disclose a copy of the document that has been marked as Confidential Information  
25 by the designating party, in accordance with subparagraphs 3.2 and 7.1.

26       5. **Objections to Designations.** Any party objecting to a designation of Confidential  
27 Information, including objections to portions of designations of multi-page documents, shall notify  
28 the designating party and all other parties of the objection in writing up to and through 70 days

1 before trial of the matter provided, however, that neither party to this litigation shall have the right  
2 to designate as "not confidential" any information subject to Petro's claim of privilege. This  
3 notice must specifically identify each document that the objecting party in good faith believes  
4 should not be designated as Confidential Information and provide a brief statement of the grounds  
5 for such belief. In accordance with the Federal Rules of Civil Procedure governing discovery  
6 disputes, the objecting and the designating parties thereafter shall confer within ten (10) days after  
7 the date of such objection in an attempt to resolve their differences. If the parties are unable to  
8 resolve their differences, the objecting party shall have twenty one (21) days after the conference  
9 concludes to file with the Court a motion to remove the Confidential Information. Where a party  
10 authored, created, owns, or controls a document, information or other material that another party  
11 designates as Confidential Information, the party that authored, created, owns, or controls the  
12 Confidential Information may so inform the objecting party and thereafter shall also be considered  
13 a designating party for purposes of this paragraph.

14 All documents, information and other materials containing Petro's privileged information  
15 or otherwise initially designated as Confidential Information shall be treated as such in accordance  
16 with this Protective Order unless and until the Court rules otherwise, except for deposition  
17 transcripts and exhibits initially considered as containing Confidential Information under  
18 subparagraph 3.5, which will lose their confidential status after twenty-one (21) days unless so  
19 designated as Confidential Information. If the Court rules that a designation should not be  
20 maintained as to a particular document, the producing party shall, upon written request by a party,  
21 provide that party a copy of that document without the designation described in subparagraph 3.2.

22 If an objecting party elects not to make such a motion with respect to documents within  
23 twenty one (21) days after the conference, information or other materials to which an objection has  
24 been made, the objection shall be deemed withdrawn. The designating party shall have twenty one  
25 (21) days to respond to the objecting party's motion. If no response is filed by the designating  
26 party within twenty one (21) days, the designating party shall be deemed to have consented to the  
27 objecting party's motion pursuant to LR 7-2(d).

28

1        6.     **Custody**. All Confidential Information and any and all copies, extracts and  
2 summaries thereof, including memoranda relating thereto, shall be retained by the receiving party  
3 in the custody of counsel of record, or by persons to whom disclosure is authorized under  
4 subparagraph 7.1.

## **5      7. Handling Prior to Trial.**

6                   7.1        Authorized Disclosures. Confidential Information shall be disclosed by the  
7 receiving party only to the following persons:

- a. Counsel for the parties in this litigation, including their associates, clerks, paralegals, and secretarial personnel;
  - b. Qualified persons taking testimony in this litigation involving such Confidential Information, and necessary stenographic, videotape and clerical personnel;
  - c. Experts and their staff who are retained by counsel as expert witnesses for a party in this litigation;
  - d. Experts and their staff who are consulted by counsel for a party in this litigation;
  - e. Parties to this litigation, limited to the named party and, if that party is a corporate entity, a limited number of employees of the corporate entity and its insurers;
  - f. Designated in-house counsel and a limited number of assistants, administrative or otherwise;
  - g. Outside vendors employed by counsel for copying, scanning and general handling of documents;
  - h. Any person of whom testimony is taken regarding the Confidential Information, except that such person may only be shown Confidential Information during his/her testimony, and may not retain a copy of such Confidential Information; and

1                   i.     This Court and this Court's staff, subject to the Court's processes for  
2                         filing materials under seal.

3                     Such disclosures are authorized only to the extent necessary to investigate, prosecute, or  
4                     defend the litigation.

5                     Confidential Information may not be disclosed to persons under subparagraph (c) or (d)  
6                     until the receiving party has obtained a written acknowledgment from the person receiving  
7                     Confidential Information, in the form of the Declaration attached hereto as Exhibit A, that he or  
8                     she has received a copy of this Protective Order and has agreed to be bound by it. A party who  
9                     discloses Confidential Information in accordance with subparagraph 7.1 shall retain the written  
10                    acknowledgment from each person receiving Confidential Information, shall maintain a list of all  
11                    persons to whom a receiving party has disclosed Confidential Information and identify what  
12                    documents have been disclosed, and shall furnish the written acknowledgments and disclosure list  
13                    to opposing counsel as follows: (i) for a person under subparagraph (c), within thirty (30) days  
14                    after the person signs the Declaration; and (ii) for a person under subparagraph (d), within thirty  
15                    (30) days after the matter is finally concluded. A party who discloses Confidential Information in  
16                    accordance with subparagraph 7.1 shall also furnish the written acknowledgements and disclosures  
17                    list to the Court for in camera review upon its request or order. Furnishing the written  
18                    acknowledgments and disclosure list to the Court shall not constitute a waiver of the attorney work  
19                    product or attorney-client privilege. Disclosure of Confidential Information to this Court,  
20                    including judicial staff, shall be made in accordance with subparagraph 7.4 of this Protective  
21                    Order.

22                    7.2     Unauthorized Disclosures. All persons receiving Confidential Information  
23                     under the terms of this Protective Order are under the jurisdiction of the state courts and U.S.  
24                     federal courts located in Nevada for all matters arising from the improper disclosure or use of such  
25                     information. If Confidential Information is disclosed to any person other than in the manner  
26                     authorized by this Protective Order, the party or person responsible for the disclosure, and any  
27                     other party or person who is subject to this Protective Order and learns of such disclosure, shall  
28                     immediately bring such disclosure to the attention of the designating party. Without prejudice to

1 other rights and remedies of the designating party, the responsible party or person shall make  
 2 every effort to obtain and return the Confidential Information and to prevent further disclosure on  
 3 its own part or on the part of the person who was the unauthorized recipient of such information.

4           7.3     **Court Filings.** In the event any Confidential Information must be filed with  
 5 the Court prior to trial, the proposed filing shall comply with the Federal Rules of Civil Procedure  
 6 and the requirements set forth in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th  
 7 Cir. 2006). In accordance with these rules and requirements, the proposed filing shall be  
 8 accompanied by a motion to file the Confidential Information under seal and a proposed order, and  
 9 the application and proposed order shall be directed to the judge to whom the Confidential  
 10 Information is directed. This provision is applicable to briefs, memoranda, and other filings which  
 11 quote, summarize, or describe Confidential Information.

12           8.       **Care in Storage.** Any person in possession of Confidential Information produced  
 13 by another party shall exercise reasonable and appropriate care with regard to the storage, custody,  
 14 copying, and use of such information to ensure that the confidential and sensitive nature of same is  
 15 maintained.

16           9.       **Handling During Trial.** Confidential Information that is subject to this Order may  
 17 be marked and used as trial exhibits by either party, subject to terms and conditions as imposed by  
 18 the Court upon application by any party.

19           10.      **No Implied Waivers.** This Protective Order shall not be interpreted as a waiver of  
 20 the right to object, under applicable law, to the furnishing of information in response to discovery  
 21 requests or to object to a requested inspection of documents or facilities. Parties producing  
 22 Confidential Information in this litigation are doing so only pursuant to the terms of this Protective  
 23 Order. The taking of any action in accordance with the provisions of this Protective Order shall  
 24 not be interpreted as a waiver of any claim or position or defense in this action, or any other  
 25 actions.

26           11.      **No Admission.** The designation of any item as Confidential Information shall not  
 27 be construed as an admission that such material, or any testimony concerning such material, would  
 28 be admissible in evidence in this litigation or in any other proceeding.

1       12. **Inadvertent Disclosure.** Nothing in this Protective Order abridges applicable law  
2 concerning inadvertent disclosure of a document that the Disclosing Party believes contains  
3 attorney-client communications, attorney work product, or otherwise privileged information. If a  
4 party inadvertently discloses documents or information subject to a claim of privilege or work  
5 product protection, such disclosure will not waive otherwise applicable claims of privilege or  
6 work product protection under applicable law. Upon discovery by the Receiving Party, or receipt  
7 of written notice from the Disclosing Party identifying privileged or protected Documents that  
8 were inadvertently produced, the receiving party shall within seven (7) business days either:  
9 (a) return or certify the destruction of all such documents, all copies, and any work product or  
10 portions of any work product containing or reflecting the contents of the subject materials; or  
11 (b) after attempting to resolve any dispute with opposing counsel informally, file a motion to  
12 challenge the assertion of privilege and tender the subject documents for in camera review with  
13 the motion. The moving party shall do nothing to compromise the privilege claim until the Court  
14 rules on said motion and the opportunity for appellate review is exhausted or the issue is otherwise  
15 resolved.

16       13. **Parties' Own Documents.** This Protective Order shall in no way restrict the  
17 parties in their use of their own documents and information, and nothing in this Protective Order  
18 shall preclude any party from voluntarily disclosing its own documents or information to any party  
19 or nonparty.

20       14. **Motion to Compel Production of Confidential Information.** If any third party  
21 subpoenas Confidential Information from a party to this action or moves to compel a party to this  
22 action to produce any such information, such party shall immediately notify the parties who  
23 originally produced and/or designated such information that a subpoena has been served or a  
24 motion has been made in order to allow the parties who originally produced and/or designated  
25 such information the opportunity to seek a protective order or oppose the motion or application. If,  
26 within thirty (30) days after receiving notice of a subpoena seeking Confidential Information from  
27 a receiving party, the party who originally produced and/or designated such information fails to  
28 move for a protective order, the party subject to the subpoena may produce said information. In

1 addition, if a party is ordered to produce Confidential Information covered by this Protective  
2 Order, then notice and, if available, a copy of the order compelling disclosure shall immediately be  
3 given the parties who originally produced and/or designated such information. Nothing in this  
4 Protective Order shall be construed as requiring the party who is ordered to produce such  
5 Confidential Information to challenge or appeal any order requiring the production of such  
6 information or to subject himself/herself to any penalty for non-compliance with any legal process  
7 or seek any relief from the Court.

8       15.     **No Effect on Other Rights.** This Protective Order shall in no way abrogate or  
9 diminish any pre-existing contractual, statutory, or other legal obligations or rights of any party  
10 with respect to Confidential Information.

11       16.     **Modification.** In the event any party hereto seeks a Court order to modify the terms  
12 of this Protective Order, or seeks a protective order which incorporates the terms and conditions of  
13 this Protective Order said party shall make such request by written stipulation or noticed motion to  
14 all parties that must be served and filed in accordance with local court rules.

15       17.     **Handling Upon Conclusion of Litigation.** All parties, counsel, and persons to  
16 whom disclosure was made agree to return all Confidential Information to the designating party  
17 within ninety (90) days of the conclusion of litigation between the parties, including final appellate  
18 action or the expiration of time to appeal or seek further review. In addition, counsel shall certify  
19 in writing that all such Confidential Information have been returned. Counsel for each party also  
20 shall contact each person to whom that party has provided a copy of any Confidential Information  
21 and request the documents be returned. In lieu of returning Confidential Information, the person or  
22 party in possession of such information may elect to destroy it. If the person or party in possession  
23 of Confidential Information elects to destroy it rather than return it, that person or party must  
24 notify the designating party in writing of the destruction of the information within ninety (90) days  
25 of the conclusion of litigation between the parties, including final appellate action or the expiration  
26 of time to appeal or seek further review. Each party understands that Petro has communicated its  
27 position that it does not waive now, and does not intend to waive in the future, its claim of  
28 privilege.

1           18. **Survival of the Terms of this Protective Order.** Even after the termination of this  
2 litigation, the confidentiality obligations imposed by this Protective Order shall remain in effect  
3 until a Designating Party otherwise in writing or a court order otherwise directs.

4           RESPECTFULLY SUBMITTED this 20 day of March, 2013.

5           CHRISTIAN, KRAVITZ, DICHTER  
6           JOHNSON & SLUGA, LLC

KOELLER, NEBEKER, CARLSON &  
HALUCK, LLP

7           Dated this 13 day of March, 2013

Dated this 15 day of March, 2013

8           */s/ Martin J. Kravitz*

*/s/ Ian P. Gillan*

9           Martin J. Kravitz, Esq.  
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Attorney for LIBERTY MUTUAL  
INSURANCE COMPANY

13           GIBSON, DUNN & CRUTCHER LLP

14           Dated this 14 day of March, 2013

15           */s/ Gregory J. Kerwin*

16           Gregory J. Kerwin, Esq.  
17           1801 California St. #4200  
18           Denver, CO 80202  
19           Attorney for LIBERTY MUTUAL  
INSURANCE COMPANY

20           **ORDER**

21           IT IS SO ORDERED.

22           Dated: March 21, 2013.

23  
24  
25             
U.S. MAGISTRATE JUDGE

## **EXHIBIT A**

**DECLARATION RE: PROTECTIVE ORDER**

I, \_\_\_\_\_, hereby declare

1. I have reviewed the Stipulation and Protective Order ("Order") entered in -  
and am familiar with its contents.

2. As a condition to being permitted access to material determined to be "Confidential" in the above-captioned matter, I agree to be bound by the terms and conditions of the Order, and I promise to comply with the Order.

9       3. As a further condition to being permitted access to material determined to be  
10 "Confidential" in the above-captioned matter, I agree (i) not to disclose to anyone any documents,  
11 materials or information marked "Confidential;" and (ii) not to make any copies of any  
12 documents, material or information marked "Confidential" furnished to me.

13           4. As a further condition to being permitted access to material determined to be  
14 "Confidential" in the above-captioned matter, I agree on behalf of myself and, to the extent  
15 applicable, my employer and/or employees, to submit to personal jurisdiction before the above-  
16 entitled Court for purposes of any dispute arising from the Order, including its enforcement.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on \_\_\_\_\_, at \_\_\_\_\_.  
[Date] [City/State]

**Signature:**

Printed Name: